

**M e m o r a n d u m****330.2573**

To: Santa Rosa – District Administrator (AHT)

Date: March 11, 1975

From: Tax Counsel (GJJ) – Headquarters

Subject:

This is in response to your memorandum dated December 2, 1974.

We understand that --- and --- were partners in the business known as ---. Each held a 50 percent interest in the partnership. As of July 1, 1974, --- withdrew from the partnership and --- are admitted to the partnership in place of ---. There is no indication that --- and the four new members of the partnership had entered into an agreement in writing providing that the withdrawal and admission would not cause the dissolution of the original partnership. Thus, it is clear that as of July 1, 1974, one partnership ended and a new partnership commenced.

Also on July 1, 1974, the partners in the new partnership agreed to form a corporation and to transfer all assets of the new partnership, other than equipment, to the new corporation solely in exchange for first issue stock.

On August 14, 1974, the new partnership leased to the corporation the equipment which the new partnership had retained.

The original partnership had presumably paid tax on the equipment when it was originally acquired.

The new partnership now proposes to lease the equipment to the corporation.

We are of the opinion that tax applies to the rental receipts. The equipment does not maintain its taxpaid status in the hands of the new partnership. In fact there is no way in which the equipment could be put into a taxpaid status since all of the equipment apparently was transferred to the new partnership solely in exchange for ownership interests in the new partnership.

We agree with your analysis that the outgoing partner --- sold an interest in tangible personal property to the four persons who were to become partners in the new partnership and

that this was an occasional sale. These four individuals in turn contributed what they acquired to the new partnership in exchange for interests in the new partnership.

We understand that the new partnership paid tax with respect to 50 percent of the book value of the assets held by the original partnership. This was incorrect. This amount should be refunded to the new partnership or credit should be given against rental receipts due for rental of the equipment in question.

bc: Mr. T. P. Putnam  
Mr. Glenn L. Rigby  
Mr. H. L. Cohen